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CALFED Bay-Delta Program
1416 Ninth Street, Suite 1155
Sacramento, California 95814
Attn: Mr. Rick Breitenbach

RE. Draft Programmatic Environmental Impact Statement / Environmental Impact Report
SCH No. 96032083; DES No. 9809

Dear Mr. Breitenbach:

We would like to submit the following comments and concerns based upon our initial review of the documents.

The overall program appearance seems directed toward new facility construction and development to facilitate future increased diversions. Environmental restoration is treated as a secondary subject rather than an equal focus issue. The documents appear to present increased water diversions and transfer sales as a given, or uncontestable assumption. This approach to document preparation does not present an objective viewpoint toward the resource issues and will continue to perpetuate the polarized political positions that have created the current situation of severely degraded resources. The dependence upon structural solutions to environmental problems will also perpetuate the commitment to very expensive construction, maintenance and repair of more and more facilities that have yet to be demonstrated to be legitimately needed or viable for the long term.

The reports fail to acknowledge the simplest, most affordable and effective approach to resolving a large portion of the problems occurring in the Delta which simply involves reduction in water use and demand. Increases in conservation programs and water use efficiency, if combined with a full coverage impact surcharge on all water exports, could likely accomplish the same basic objectives for a fraction of the cost. Most effective of all would be restriction of water transfer sales to scientifically demonstrated sustainable levels. This would remove the corrupting influence of the financial interests that seek maximum profit at the expense of the natural environment. Instead, state and federal taxpayers face subsidizing a program that appears focused on drastically expanding water transfer sale export facilities which will provide profit to a relative few and drastically facilitate the continued sprawling, uncontrolled growth in locations that do not have sufficient facilities, services and resources to support such development in a manner that is sustainable or environmentally

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responsible.

Water and the fish and wildlife that depend upon it are public resources that are completely dependent upon this program's ability to ensure their conservation. If objectively determined and documented to be feasible, all continuing and future water diversions and transfer sales should be 100% financially responsible for all of the restoration and enhancement activities needed to completely off set their impacts and further contribute to a comprehensive restoration and enhancement program that is needed to rectify the environmental damage and resource degradation that has already occurred. Transfer sale fees should provide this funding. If found economically infeasible, pumping and transfer sales should be incrementally curtailed to whatever point the degradation would stop. This threshold should be the baseline for resource allocation decisions. Only very limited pumping or transfer programs that can be clearly documented to have no potential for long term degradation and which pay for mitigation of their impacts 100% should be permitted to continue. Continued licensing and operation of dam facilities should similarly off-set the costs of their usage and operation for hydroelectric energy generation.

Since there is no end in sight to the highly land consumptive urban sprawl that is fueled by the uncontrolled population growth in California; and since the State of California has not taken any proactive measures to address such issues; and since a large amount of such growth is expected to occur during the time frames of the project and within the prime agricultural areas of the state; therefore it could be reasonably expected that the permanent loss of agricultural land uses will free up historical agricultural water allocations to support the additional urban development. If properly factored in, this unfortunate reality could largely negate the need for increased facilities proposed by the Program. This issue needs further analysis and discussion.

Primary water allocations should be for historical communities and agricultural uses with urban transfer sales permitted only in surplus years with full mitigation and restoration already established. Only after successful restorative and remedial actions and improvements should any new facilities or additional diversion be considered. Monitoring would determine if any future exports could be permitted.

Watershed management recommendations are inexplicably played down as to their significance and effectiveness when in fact the benefits are very obvious. Many local drainages could drastically benefit from relatively simple programs that focus on education and conservation.

Total water volumes and ecosystem need are not discussed as related issues, which is a clear connection that must be addressed. The reports seem to avoid this touchy issue since there is already a deficit in average years and the above mentioned assumption that all current diversions will continue.

DAMS

Alternatives do not consider decommissioning of dams and other river/stream obstructions. Since these facilities are largely responsible for much of the resource degradation that has occurred over the past 50 or more years it would be logical to include these alternatives. This subject is not

mentioned and yet could provide a large part of the needed mitigation that might permit future operations of the remaining facilities that are part of the CVP or SWP. This program study should not be considered complete until this aspect has been thoroughly analyzed, evaluated and incorporated into the primary focus of the program. The life expectancy of these facilities will fall within the projected time frames of the applicability of this program further justifying the need for consideration of such alternatives. The exclusion of this type of discussion brings the validity of the entire program into question.

It is recommended that the documents be revised to include:

1) a comprehensive discussion of the existing inventory of dam facilities and their impacts of their operation on the river and bay-delta ecosystems;
2) a practical discussion of the life expectancy of each facility including a discussion of the gravel/sediment/silt accumulation that is occurring and the impacts of the continued obstruction of the gravel/sediment/silt on the lower rivers and bay-delta;
3) the potential for decommissioning of each facility and the environmental benefits that could be achieved such as restoration of endangered or severely limited salmon and steelhead population spawning grounds;
4) reoperation of dam facilities to provide maximum flood protection and environmental benefit;
5) relocation of storage facilities to off stream locations that have the least environmental impacts;
6) use of new bypass systems to handle flood flows to offset flood control losses due to decommissioning or other mitigation while permitting seasonal agricultural uses;
7) further analysis of expansion or widening of levee systems and how it would increase flood control capacity and reduce long term maintenance costs while also increasing riparian habitat within a meander belt;
8) approaches to off set, compensate, mitigate or otherwise minimize the impact of needed new bypasses, wider levees and any resultant land idling.

STORAGE

Surface storage appears most viable and likely in the Delta itself where it occurred historically prior to reclamation and should be considered as the priority. The costs and hazards associated with maintaining levees to protect lands 25 feet below sea level do not appear cost effective when viewed from a statewide strategy.

Surface storage in upstream locations are incredibly expensive to build and often not properly assessed for construction or long term maintenance costs. Loss of riparian habitat, river canyons and wetlands should be mitigated by consideration of environmentally superior locations such as the off-stream alternatives.

GROUNDWATER

Groundwater pumping for transfer sales have not been proven to be a viable option, and if anything, have been proven nonviable if the San Joaquin Valley is used as an example. The potential impacts of even minor overdrafting are so huge they could never be mitigated. Once subsidence occurs there is no repair for the geologic substructure that is destroyed. Once water quality degradation occurs

from salt water intrusion or migration of trace toxic minerals, those aquifers are usually beyond use. Even comparatively minor withdrawals for this program will result in local impacts to the many private wells that serve residences, businesses, local agencies and other jurisdictions and most notably agriculturalists who have historically utilized groundwater in a sustainable manner.

MITIGATION STRATEGIES

Section 7.2.2.6 fails to include a full range of potential mitigation measures that would most effectively accomplish the desired mitigation. Examples include the removal of additional dams and other obstructions to anadromous fish migration. This short sighted approach exposes the document's weaknesses and calls into question all of the recommendations which appear to be minimalist approaches that will still facilitate the maximum amount of water diversions and transfer sales. The document appears to be entirely focused upon facilitating extensive infrastructure improvements for the transfer and delivery of water to the south to the detriment of the resources in the delta and the river systems. Minimalist mitigation measures and superficial strategies that are too weak to accomplish the needed restoration are inadequate for the purposes of satisfying NEPA or CEQA. The billions of dollars that are at stake for the water contractor's sales and the southern California development industry will continue to overwhelm the ability of the agencies involved to legitimately restore and protect the resources that continue to be degraded. The entire program appears structured to perpetuate this unbalanced situation.

Mitigation programs should include significant additional fee collection to pay for all costs associated with primary and secondary environmental restoration programs for both current and future transfer sales. Agricultural production losses or land idling should be considered undesirable and be proportionally offset with fees to local counties that suffer economic losses.

While the documents themselves appear carefully prepared, many deficiencies are found in the sections that relate to mitigation. The deferral of certain studies and analyses will leave many issues completely unresolved and therefore too weak to support future difficult decisions regarding resource conservation and preservation. Mitigation options that include habitat creation should be a lower priority than in-place preservation and restoration since this approach has yet to be solidly proven as adequate mitigation and creates the potential for certain jurisdictions to get a disproportionate amount of the mitigation lands which could have local economic impacts. Claims of adequate mitigation would be inappropriate if the primary focus were habitat creation. It could require many times the needed acreage to achieve legitimate mitigation through habitat creation, particularly in regards to seasonal wetlands and the sensitive species that are dependent upon them.

The concept of Adaptive Management appears integral to the overall program, however there are no assurances that this process won't be used to defer legitimate mitigation or avoid difficult mitigation. The description found in the Phase II Interim Report does not answer the critical questions regarding the need for continuing resource conservation and restoration, independent of the interim arguments that will undoubtedly be presented in support of greater water exports. The DEIS/EIR properly identifies the extensive resource loss and degradation (80+% for wetlands and 95+% for riparian areas) that provides the focus for the entire Program. A goal of the Program should be remedial resource restoration and conservation for impacts from continued operation of the CVP and SWP,

independent of the future demand for the resources. There is a considerable amount of uncertainty in this feature of the program, which appears very dependent upon the Adaptive Management concept. This Adaptive Management process should be clearly defined as a management tool that will not be used to reduce the restoration or conservation requirements of this program.

IMPACTS

Explanations that water sales will only occur from willing sellers provides no assurance of resource conservation. This simply sets the stage for individuals to sell out for the lowest price to get the transfer sale contract thereby degrading the resource at the bargain price. It also sets the stage for water agencies or contractors to simply buy out existing agricultural operations and any other water rights for full exploitation through land idling or resource degradation on a dispersed pattern. These situations have occurred in the past and will occur in the future as a result of this program if approved in its current form. Any new transfer sales dependent upon groundwater should be delayed until the location from which the resource is proposed to be extracted has a groundwater management plan in place that contains comprehensive mitigation and monitoring. The CALFED Program should assist all agencies that could be impacted by such extractions to develop individual groundwater management programs and mandate that they accomplish adequate mitigation and monitoring.

In regards to the Growth Inducing Impacts section, the discussion remarkably dispatches one of the most significant impacts of this massive project in two paragraphs. It is extraordinary indeed how the document absolves this program of any responsibility relating to the facilitation of the tremendous amount of growth that will occur which will be completely dependent upon the new water supplies and increased diversions. The indisputable fact that this project will facilitate the continued urban sprawl and uncontrolled conversion of agricultural land throughout the state is completely and inexplicably ignored. This section is completely deficient in every respect and cannot be considered to have satisfied NEPA or CEQA in this regard. This issue alone renders the document legally deficient and warrants major revision and recirculation. The growth-inducing impacts of this project in its current form are significant, adverse and unavoidable. Because the Program places emphasis on water resource development and facility construction, the claims of beneficial impacts are unsupported and unjustifiable. While the document describes vague future restoration activities that may occur at some indeterminant point in the future, it is quite clear and specific about the desired large scale facility improvements that are desired which will facilitate the transfer sales that appear to be the focus of the program's efforts.

One objective of the program should be to study the environmental restoration needs in a comprehensive manner to determine the full extent of impacts resulting from continued operation of the current water diversion facilities. Modifications to current operations should be identified as a priority. Development of new facilities will create the potential for greater, future impacts and degradation as the pressure becomes greater for larger water diversions in the future. If mitigation measures are dependent upon operational regulations of the new facilities, the project could be overwhelmed by future political forces that would abuse the facilities and modify the operations to the detriment of the environment and the benefit of the water contractors and all the industries that could profit from them. Water efficiency increases, conservation programs, alternative source development (including desalination), and reoperation of existing facilities should all have priority

ranking over construction of new facilities.

The overall environmental review process is intended to identify and disclose all potential environmental impacts and provide all feasible mitigation possible. If proper mitigation is determined economically infeasible, resource development should be curtailed to an appropriate level that will not result in degradation.

As long as agencies and contractors that have any financial interest in increased transfer sales have a primary influence on program priorities, the undeniable conflict of interest will continue to exist and taint the program, leaving the conclusions and recommendations in question and therefore inadequate for the purposes of satisfying NEPA and CEQA. Realistic, reliable and verifiable data must provide the basis for all analyses to support objective determinations.

A rush to approve the program without the recommended revisions and adequate review will only increase the perception that the program is intent on facilitating greater diversions through increased facility development and that environmental restoration and conservation is an afterthought that may never be achieved.

In consideration of the many financially challenged jurisdictions that are the source of the water supply, the program should include assistance to these jurisdictions in the way of revenue generation from sales fees and environmental program establishment. Rural counties should be provided direct assistance from federal and state regulatory agencies in the form of comprehensive natural community conservation programs that provide permitting and economic development assistance. Such programs should provide credits for existing natural resources and maintaining land uses that provide habitat for sensitive species.

Until such time as the recommended modifications are made and the documents are recirculated we will continue to have significant concerns regarding the objectives, methods, analyses and impacts associated with the proposed program. The assumptions that provide the basis for the extensive projected water demands should be independently verified and confirmed for the many local agencies and jurisdictions that will be required to deal with the long term implementation of this program and its mitigation requirements.

Sincerely,

Tim Davis

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